

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-186053

DATE: July 28, 1976

MATTER OF: Adam David Company

7-226

98798

DIGEST:

1. Fact that offeror substantially lowers its price between its initial proposal and best and final offer does not indicate existence of price leak since it is not uncommon for an offeror to withhold its lowest price until best and final offers are submitted.
2. Where pre-award surveys are initiated prior to receipt of best and final offers because of exigency of procurement, continuation of pre-award survey on offeror no longer low after receipt of best and final offers is not improper since it could have been in line for award had low offeror withdrawn its proposal or been found nonresponsive.

Adam David Company (Adam David) protests the award of a contract for 54,383 M-17 periscopes under request for proposals (RFP) No. DAAA25-76-R0089 issued by the Department of the Army's Frankford Arsenal in Philadelphia, Pennsylvania. Adam David alleges the possible leaking of its proposed price and questions why a pre-award survey was performed on it when it was not in contention for award. It also questions whether the Army sought to determine if the awardee could perform at the award price. For the reasons discussed below, the protest is denied.

The procurement was negotiated pursuant to 10 U.S.C. 2304 (a)(2) (1970), which provides for the use of negotiated procedures in lieu of formal advertising when the public exigency so requires. Six initial proposals were received in response to the RFP on December 15, 1975, the closing date for receipt of proposals. By letter dated December 18, 1975 one of the initial offerors, Adam David, submitted a voluntary price reduction. Thereafter, the Army established a "zone of consideration" consisting of Adam David, OptiDyne, Incorporated (OptiDyne), the eventual awardee, and one other offeror.

On January 23, 1976, the Army asked the three firms under consideration to submit their best and final offers by 5:00 p.m., February 6, 1976. During January the Army also asked Defense Contract Administration Services (DCAS) to conduct pre-award surveys on Adam David and OptiDyne. Adam David's best and final offer was the same as that in its price reduction letter of December 18, 1975. OptiDyne reduced its December 15, 1975 proposal by \$3.52 per periscope and submitted an offer of \$2.50 per periscope less than Adam David's final offer. The Army awarded the contract to OptiDyne as the low responsible and technically acceptable offeror on March 2, 1976.

Adam David does not offer any evidence to support its assertion of a possible price leak. Rather, it impliedly suggests that if OptiDyne's best and final offer was received after receipt of Adam David's best and final offer, the possibility of a price leak would be apparent. In this regard, Adam David refers to inconsistent Army statements regarding the time of submission of the OptiDyne offer.

The record shows that Adam David was originally orally advised that the OptiDyne offer was submitted on February 5, 1976 but was subsequently advised that this was erroneous and that in fact the OptiDyne offer had been hand-delivered at 4:25 p.m. on February 6, 1976. This latter time is indicated by both the Arsenal's visitors log and a copy of a delivery receipt given to OptiDyne's representative. The record further shows that Adam David's best and final offer was hand-delivered at 4:50 p.m. on February 6, 1976. Thus it is apparent that in any event OptiDyne's offer was received by the Frankford Arsenal prior to rather than after delivery of the protester's offer.

The fact that OptiDyne lowered its price by \$3.52 per periscope between its initial proposal and best and final offer does not indicate the existence of a price leak. This Office has recognized that it is not uncommon for an offeror to withhold its lowest offer until its best and final offer is submitted and that such a price reduction during negotiations is not an indication of access to prices submitted by other offerors. Bruno-New York Industries Corporation, B-184679, January 22, 1976, 76-1 CPD 36; Davidson Optronics, Inc., B-179925, February 22, 1974; 74-1 CPD 93; Bell Aerospace Company, 55 Comp. Gen. 244 (1975), 75-2 CPD 168. The contracting officer


also reports that he, in coordination with Army counsel, investigated protester's charge of a possible price leak and found no evidence that Adam David's proposal was leaked. Accordingly, on this record, we are unable to conclude that this procurement was marred by a price leak.

With regard to the pre-award survey on Adam David, the contracting officer reports that, because of the exigency of the procurement, he requested pre-award surveys to be conducted on two of the three offerors in the "zone of consideration." The pre-award survey on Adam David (whose price was low on the basis of its December 18, 1975 price reduction letter) was initiated in early January (prior to receipt of best and final offers) and was completed on February 19, 1976, nine working days after OptiDyne's low best and final offer was received. The contracting officer points out that although OptiDyne was the low offeror after receipt of final offers, Adam David was not "no longer a contender" for award because OptiDyne could have withdrawn its offer or could have been found to be nonresponsible. Thus, we see no impropriety in the continuation of the pre-award survey on Adam David after February 6, 1976.

On Adam David's final point, the contracting officer reports that a price analysis on OptiDyne's proposal was conducted and that OptiDyne's price was considered to be fair and reasonable and not "unreasonably low." Also a pre-award survey on OptiDyne was conducted and the firm was found capable of performing the contract. Such affirmative determinations of responsibility are not reviewed by this Office unless there are allegations or demonstrations that contracting officer's actions in finding a bidder or offeror responsible are tantamount to fraud. Central Metal Products, Incorporated, 54 Comp. Gen. 66 (1974), 74-2 CPD 64; Yardney Electric Corporation, 54 Comp. Gen. 509 (1974), 74-2 CPD 376. There are no such allegations here.

In view of the above, the protest is denied.

Deputy


Comptroller General
of the United States